

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

STATE OF SOUTH CAROLINA, *et al.*,

Plaintiffs,

AUGUSTA, GEORGIA,

Plaintiff-Intervenor,

v.

UNITED STATES ARMY CORPS OF
ENGINEERS, *et al.*,

Federal Defendants,

GEORGIA PORTS AUTHORITY,

Defendant-Intervenor.

STATUS REPORT

Civil Action No. 1:19-cv-03132-RMG

Plaintiffs State of South Carolina, the South Carolina Department of Health and Environmental Control, and the Savannah River Maritime Commission (collectively, “South Carolina”), Plaintiff-Intervenor City of Augusta (“Augusta”), Defendant-Intervenor Georgia Ports Authority (“GPA”), and Federal Defendants United States Army Corps of Engineers; United States Army Corps of Engineers, Savannah District; Ryan McCarthy, in his official capacity as Secretary of the Army; Lt. Gen. Scott A. Spellmon, in his official capacity as Commanding General and Chief of Engineers, U.S. Army Corps of Engineers; Col. Jason E. Kelly, in his official capacity as Commanding General, South Atlantic Division, U.S. Army Corps of Engineers; and Col. Daniel H. Hibner, in his official capacity as District Engineer, U.S. Army Corps of Engineers, Savannah District; (collectively, the “Corps”) jointly moved the Court for a stay of all proceedings until October 1, 2020 (Dkt. No. 74). On July 20, 2020, the Court granted the joint motion and further “directed [the parties] to provide the Court a status report every 30 days and on 10/1/20.” Dkt. No. 76. The parties provide the following status report:

1. The parties moved in July to stay this litigation for two reasons: (1) to allow time for a site visit to the New Savannah Bluff Lock & Dam (“NSBLD”); and (2) to provide time for the South Carolina and Georgia Congressional delegations to continue working through the legislative process. Dkt. No. 74, ¶¶ 3-4.

2. First, with respect to the NSBLD visit, the parties continue to move forward cooperatively toward scheduling the site visit as soon as possible.

3. As described in the parties’ status report submitted September 21, 2020, the Corps is processing the 408 Permission Request, which it received September 15. Per Corps regulations, a public notice describing the request was issued on September 21, 2020. The two-week public notice and comment period closes on October 2, 2020. Following the close of the comment period,

the Corps will review and evaluate any comments received and expects to issue a decision on the permit as soon as possible thereafter. Prior to issuing a decision, however, the Corps must receive a revised application limiting the requestors to South Carolina and Augusta—the requestors covered by the parties’ non-disclosure agreement. If the permit is issued, the parties’ technical teams will confer and agree upon dates for the NSBLD visit.

4. Next, with respect to the legislative process, no federal legislation respecting the NSBLD has yet been enacted by Congress. Augusta reports that: entities familiar with the status indicate that Congress’s focus on the Supreme Court nomination as to Senate, COVID as to House and Senate, continuing resolution as to federal government funding as to House and Senate, and the upcoming Federal election have taken precedence; however, it is anticipated that some legislative approach will be forthcoming post November 3, 2020.

5. At this juncture the Corps is moving forward with the project as planned. Pursuant to the requirements outlined in the second amendment to the 2011 Biological Opinion from the National Marine Fisheries Service (received by the Corps on October 10, 2017), the Corps must commence construction “prior to January 2021.” *See* Dkt. Nos. 1-3 at 2; 1-12 at 116, 124. Presently, the Corps expects that construction will commence as planned, with contractors likely beginning work in the park surrounding the NSBLD in January 2021.

6. South Carolina and Augusta have indicated that they may move for a preliminary injunction. To ensure that the parties have sufficient time to brief any request for injunctive relief and that the Court has sufficient time to rule on any such motion, South Carolina and Augusta agree to file any motion for preliminary injunctive relief on or before October 22. In the event either party so moves, Federal Defendants and Defendant-Intervenor shall file any oppositions thereto on or before November 5, and South Carolina and Augusta shall file any replies in support

of their motions on or before November 12. The parties would then request a hearing on the motion(s) on November 19, or at the Court's convenience.

7. In the event no party moves for a preliminary injunction prior to October 22, the parties request that the Court rule on the pending motions, which have been fully briefed and are ready for decision. Those motions include: South Carolina's Motion for Partial Summary Judgment, Dkt. No. 12; Federal Defendants' Motion for Partial Dismissal of South Carolina's Complaint, Dkt. No. 37; GPA's Motion for Partial Judgment on the Pleadings, Dkt. No. 52; and Federal Defendants' Motion for Partial Dismissal of Augusta's Complaint, Dkt. No. 56. In the event the Court would like to hear oral argument on those motions, the parties request that the Court schedule a telephonic (or virtual) hearing in mid-November.

8. South Carolina and Augusta request that the Court schedule a telephonic (or virtual) status conference to set a schedule for preliminary injunction or other motion addressing the issue of initiation of construction/removal of the New Savannah Bluff Lock & Dam as soon as possible and convenient for the Court. GPA and Federal Defendants do not join in that request but are, of course, happy to participate if the Court would find it useful. Federal Defendants note that they are unavailable Friday, October 9.

Dated: October 1, 2020

Respectfully submitted,

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